IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 136 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

EVEREST EXPORT INDUSTRIES

Appearance:

MR Akil Qureshi with Mr MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT

Per Dave, J.:

At the instance of the revenue, the following question has been referred to this court for its opinion, under the provisions of section 256 (1) of the Income tax Act, 1961 (hereinafter referred to as `the Act'):

"Whether on the facts and in the circumstances of

the case, the Tribunal was right in law in coming to the conclusion that section 80J(6A) merely requires that audit report should be so furnished so that it would be available at the time of assessment?"

Learned counsel Mr. Qureshi for the revenue fairly submitted that the question which has been raised in the present Reference has been squarely covered by the decision in the case of CIT vs. Gujarat Oil Allied Industries, 201 ITR 325. It has been held therein that simply because the assessee does not file report of an accountant along with the return at the time of filing the return, the assessee cannot be denied benefit under the provisions of section 80J of the Act because the provision with regard to filing of the report along with the return is only directory and if by chance, the report has not been annexed with the return, the assessee cannot be deprived of the benefit under the provisions of section 80J, if the report is filed by the assessee before the assessment is completed.

We are in respectful agreement with the said judgment and in view of the law laid down in the said judgment, we answer the question in favour of the assessee and against the revenue.

Reference is accordingly disposed of with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

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